United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

Orig & Affidavit of Mailing

77-1096

To be argued by
DOUGLAS KRAMER

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1096

6 p/s

UNITED STATES OF AMERICA,

Appellee,

—v.—

LAMONT B. DAY,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR THE APPELLEE

DAVID G. TRAGER,
United States Attorney,
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Docket No. 77-1096

UNITED STATES OF AMERICA,

Appellee,

—v.—

LAMONT B. DAY,

Appellant.

BRIEF FOR THE APPELLEE

Preliminary Statement

Lamont B. Day appeals from a judgment of the United States District Court for the Eastern District of New York (Platt, *J.*) entered on October 20, 1976, convicting him, following a jury trial, of conspiring to commit theft from the mail (18 U.S.C. § 371) and of mail fraud (18 U.S.C. § 1341), Counts One and Eight, respectively, of an eight count indictment. Appellant was sentenced on the conspiracy count to four years in jail and fined Two Thousand Dollars ($2,000). He was sentenced on the mail fraud count to a concurrent sentence of four years in jail and fined One Thousand Dollars ($1,000), the total fine to be Two Thousand Dollars ($2,000).[1] Appellant is free on bail pending appeal.

[1] Appellant's co-conspirators each pleaded guilty and were sentenced as follows: Woodrow Presswood pleaded to Count Five of the indictment (18 U.S.C. § 1708, theft from the mail) and was sentenced to 18 months in jail and fined Two Thousand Dollars ($2,000); Ann Louise Presswood pleaded to Count Eight

[Footnote continued on following page]

The sole issue raised by appellant in his appeal is whether the trial judge erred in denying his Rule 29(a) motion for a judgment of acquittal at the close of the evidence.

Statement of Facts

A. The Government's Case

The Government's case was presented chiefly through the testimony of Woodrow Presswood, Ann Louise Presswood and Claudie Grayson, Jr.

In early 1976 Mr. Presswood entered into an agreement with Grayson, a postal carrier, pursuant to which Grayson agreed to supply Presswood with checks stolen by Grayson from the "throwback case," the repository for undeliverable mail at the post office. (20, 25, 39).[2] Presswood would have other persons negotiate the checks (39), and, for his efforts, Grayson would receive a percentage of the value of the checks (20).

One of the difficulties which Presswood encountered in the scheme, however, was the obtaining of false identification documents to facilitate the negotiation of the stolen checks. To solve this problem he turned to appellant (43). At the time, Presswood's wife, Ann Louise Presswood, was consulting with appellant, who was a minister, the Reverend Auxillary Bishop of the Psycho-Physical Temple, a religious sect. (55, 153). Mr. Press-

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of the indictment (18 U.S.C. § 1341, mail fraud) and was sentenced to a suspended term of five years and fined One Thousand Dollars ($1,000); Claudie Grayson, Jr. pleaded to a superceding information charging him with violating 18 U.S.C. § 1701 (obstructing the passage of the mail) and was sentenced to one month in jail and fined One Hundred Dollars ($100.00).

[2] References are to pages of the trial transcript.

wood had gone to appellant for marital counseling in 1965 or 1966 (41). Thus, he remembered Day when his wife told Presswood that she was seeing appellant (43).

In early March of 1976, Mr. Presswood visited appellant and brought up the problem he was having securing false identification papers (42-43). Appellant told Presswood that he could get false papers, but he said that he had a better idea; appellant offered to handle the negotiation of the checks himself (43).[3]

Responding to this suggestion Presswood displayed a number of stolen checks to appellant, who chose several which he wanted and rejected others in which he was not interested (44, 56-57). Since Presswood was illiterate, he arranged to have his wife work out the details of the scheme with appellant (44-45).

Thereafter, in early March of 1976, Mrs. Presswood met with appellant to discuss the stolen checks which she brought with her (70 *et seq.*). During this discussion appellant demonstrated his knowledge of the esoterica of federal treasury checks by explaining the significance of the computer holes punched in the checks (71). Appellant instructed Mrs. Presswood to mail the checks which he wanted to a bank account in Youngstown, Ohio, explaining that he had several accounts there in which the checks might be deposited (71-73). He further instructed Mrs. Presswood to mail the checks by certified mail, and he gave Mrs. Presswood a blank mailing receipt for this purpose (73-74).

Shortly before March 11, 1976 Mrs. Presswood mailed the checks according to appellant's instructions (Gov. Ex. 2, return receipt), but because some of the checks were

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[3] Ms. Wilbur Newman, appellant's receptionist (242), confirmed the meetings between appellant and Presswood (246).

not endorsed and there was no deposit ticket officials at the depository bank became suspicious (115-116, 223-224), and Postal Inspectors were notified (118). Meanwhile, appellant was unable to confirm whether the stolen checks had been deposited according to his instructions, and several phone conversations were had between appellant and Mrs. Presswood (81-85).[4] Thus, in late March, 1976 appellant's step-son Mustafa called the bank to inquire why the checks had not been deposited and was told that there must be some mistake (231).

Finally, in early April of 1976, appellant called Mrs. Presswood and asked her for the name of the person at the Ohio bank who had signed the receipt for the letter enclosing the checks so that he could trace the deposits, which Mrs. Presswood gave him (82a-83). In addition, during this telephone conversation, appellant instructed Mrs. Presswood to send him as many stolen checks as she could get (84-85). He told her to mail them to his home on Youngstown, Ohio rather than to the bank (85). On April 6, 1976, Mrs. Presswood mailed a second batch of stolen checks (86), but appellant, obviously suspecting that the authorities were investigating him, refused to accept delivery of these checks and turned them over to Youngstown, Ohio, Postal Inspectors (118).

B. The Defense Case

Appellant testified in his own defense. Although he admitted knowing the Presswoods (157-161), he denied the conspiracy (162-163). He stated that the account at the Youngstown, Ohio bank was for donations to his church and that only his step-son Mustafa could make withdrawals from it (154-155). He said that he gave the bank account number to Mrs. Presswood so that she

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[4] Ms. Wilbur Newman, recalled an effort by appellant to reach Ms. Presswood by telephone about an "important" matter (247).

could make contributions (160-161), and he testified that the Presswoods bore him a grudge because he (Presswood) had had an affair with appellant's former wife (158-159).

In addition, appellant called two members of his congregation who vaguely recalled mailing deposits to an Ohio bank (e.g. 124, 130) and another member who recalled witnessing the aftermath of a liaison between appellant's wife and Presswood (142). Also testifying for the defense was the Postal Inspector who took appellant's complaint about the second package of stolen checks (118, 120). Appellant also told this Postal Inspector that stolen checks had been deposited in his step-son's account (119).

C. Rebuttal

On rebuttal officials of the Youngstown bank recounted their discovery of the initial deposit of stolen checks (223, 230), and telephone conversations about the initial deposit with Mustafa and appellant (231). Mrs. Wilbur Newman, appellant's receptionist during February and March, 1976, recalled two visits by Mr. Presswood to appellant (ft. nt. 3 *supra*) as well as a phone call by appellant to Mrs. Presswood (ft. nt. 4 *supra*). A Postal Inspector related certain post-arrest statements by appellant wherein appellant explained how the account at the Youngstown bank was used for church donations (253-254), how he learned of the receipt of stolen checks (255), and how he had received a telephone call from Mrs. Presswood concerning certain checks that were being mailed as a donation (256).

ARGUMENT

The Evidence Was Sufficient To Support The Verdict.

As his sole contention on appeal, appellant argues that the trial court erred in denying his Rule 29(a) motion for a judgment of acquittal. Appellant claims that the evidence was insufficient to sustain findings of guilt beyond a reasonable doubt by a jury. We submit that the argument is meritless.

In determining whether the court erred in denying appellant's Rule 29(a) motion, all inferences to be drawn from the evidence must be considered in the light most favorable to the Government. *United States* v. *Tramunti*, 500 F.2d 1334, 1338 (2d Cir.), *cert. denied*, 419 U.S. 1079 (1974). See also *United States* v. *Brawer*, 482 F.2d 117, 125 (2d Cir.), *cert. denied*, 419 U.S. 1051 (1974); *United States* v. *Marchisio*, 344 F.2d 653, 662 (2d Cir. 1965).

Appellant challenges his conviction on the two counts of the indictment on the ground that Woodrow and Ann Presswood both "testified under a substantial cloud of prior bias against the defendant". (App's. Brief, p. 16). Appellant supports his charge of bias with the allegation that Woodrow Pressman had an affair with his former wife. The fact is, however, that the existence of the alleged affair between Woodrow Presswood and appellant's deceased wife was denied by Presswood (62) and the truth or falsity of a witnesses' testimony is an issue for the jury to decide. *United States* v. *DeGarces*, 518 F.2d 1156, 1159 (2d Cir. 1975). Furthermore, there was no testimony that Mrs. Presswood had ever heard these allegations, nor how they would cause both of the Presswoods to be biased against appellant. Similarly, there is no support in the record for the assertion that Woodrow Presswood was aware of appellant's efforts to report his (Presswood's) alleged dealings in heroin.

Appellant also claims that because Claudie Grayson, the postman who actually stole the mail in question, had never met appellant, appellant's conviction on the conspiracy count cannot stand (App.'s Brief, p. 13, 16). Disregarding the fact that appellant unquestionably had meetings with both the Presswoods, it is clear that Grayson knew about appellant (e.g. 33-34) and that appellant knew there was a mail carrier who was stealing the checks (84-85). Face to face meetings are not required for there to be a conspiracy. *Blumenthal* v. *United States*, 332 U.S. 539, 557 (1947). It is a basic principle of law "that persons may conspire together without knowing the identity of all their co-conspirators". *United States* v. *Lam Lek Chong*, 544 F.2d 58, 65 (2d Cir. 1976).

As the Statement of Facts clearly shows, the evidence in this case, including the testimony of the three other members of the four person conspiracy, directly implicated appellant in both the conspiracy and the mail fraud. The proof was overwhelming and more than sufficient to sustain the conviction.

CONCLUSION

The judgment of conviction should be affirmed.

Dated: Brooklyn, New York
June 6, 1977

Respectfully submitted,

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AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS } ss
EASTERN DISTRICT OF NEW YORK

DOLORES M. BYRD being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 6th day of June 19 77 he served a copy of the within

BRIEF FOR APPELLEE

by placing the same in a properly postpaid franked envelope addressed to:

LOUIS R. ROSENTHAL, ESQ. 16 COURT STREET, BROOKLYN,

NEW YORK 11201

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, ~~Washington Street~~ 225 Cadman Plaza East, Borough of Brooklyn, County of Kings, City of New York.

Dolores M Byrd

Sworn to before me this

6th day of June 19 77

Carolyn N. Johnson

CAROLYN N. JOHNSON
NOTARY PUBLIC State of New York
No. 41-4618738
Qualified in Queens County
Term Expires March 30, 19 79